



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FTI - 203731

PRELIMINARY RECITALS

Pursuant to a petition filed on November 16, 2021, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit regarding FoodShare benefits (FS), a hearing was held on December 14, 2021, by telephone.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency correctly seeks to recover an overissuance of FS benefits from the Petitioner

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 12, 2007, the agency issued Notifications of FS Overissuance to the Petitioner at his address on [REDACTED], Milwaukee informing him that the agency intends to recover an overissuance of FS benefits from him as follows:

Claim # [REDACTED]	5/1/2005 – 4/30/2006	\$1809
Claim # [REDACTED]	5/1/2004 – 4/30/2005	\$1454
Claim # [REDACTED]	5/1/2003 – 4/30/2004	\$1397
Claim # [REDACTED]	5/1/2002 – 4/30/2003	\$1338

The notices informed the Petitioner of the right to appeal the agency action by filing an appeal with the Division of Hearings and Appeals.

3. On February 2, 2007, the agency issued a Repayment Agreement to the Petitioner at his address on [REDACTED], Milwaukee for Claim # [REDACTED] (\$1809), # [REDACTED] (\$1454), # [REDACTED] (\$1365), # [REDACTED] (\$1397) and # [REDACTED] (\$1338).
4. On March 2, 2007, June 4, 2007, and July 3, 2007, the agency issued dunning notices to the Petitioner at his address on [REDACTED], Milwaukee for the Claims referenced in Finding of Fact #3.
5. On October 11, 2013, the agency issued a notice of state tax intercept to the Petitioner at an address on [REDACTED], Milwaukee. It informed him that the agency may intercept state tax refunds or credits to recover an overissuance of public assistance benefits in the amount of \$8,864. The notice further informed him of the right to appeal the agency action by filing an appeal with the Division of Hearings and Appeals within 30 days of the date of the notice. The tax intercept relates to the following overpayment claims:

Claim # [REDACTED]	\$ 958
Claim # [REDACTED]	\$3792
Claim # [REDACTED]	\$ 843
Claim # [REDACTED]	\$3091
6. On November 2, 2021, the agency issued a Repayment Agreement to the Petitioner at his address on [REDACTED], Milwaukee informing him of a current balance due on a FS overpayment of \$8,737.35 for Claim # [REDACTED] (\$1843.55), # [REDACTED] (\$843), # [REDACTED] (\$955), # [REDACTED] (\$1809), # [REDACTED] (\$1454), # [REDACTED] (\$1397), and # [REDACTED] (\$435.80).
7. On November 16, 2021, the Petitioner filed an appeal with the Division of Hearings and Appeals.
8. The agency has removed the Petitioner's liability for the overpayment claims related to the tax intercept action.

DISCUSSION

An administrative law judge cannot review or rule on a matter unless there is jurisdiction to do so. There is no jurisdiction if an appeal is not timely filed. For matters involving FS benefits, including overpayments, an appeal must be filed within 90 days of the agency action. 7 CFR 273.15.

In this matter, the agency issued FS overpayment notices to the Petitioner in 2007. At the hearing, the agency representative noted that the agency has removed the Petitioner from liability for the claims for

which the tax intercept was issued but he has other outstanding overpayment claims as noted in Finding of Fact #2. According to the agency's evidence it has recouped partial amounts on Claim # [REDACTED].

The Petitioner maintains that he is not liable for the claims because he was not residing with the other liable adult on the claims. Further, the Petitioner believed that the outstanding claims had already been resolved. He further maintains that he never received any of the notices that were issued that pertain to the overpayments.

I conclude that the evidence establishes the agency issued overpayment notices to the Petitioner's correct address in January 2007. The agency also issued a repayment agreement to the Petitioner in February 2007 and dunning notices in March 2007, June 2007, and July 2007. I do not find it credible that the Petitioner received none of the notices. Further, the agency recouped \$902 from the Petitioner. Therefore, I find that the Petitioner had proper notice of the overpayment claims in 2007. His appeal in 2021 to contest the merits of the overpayments is untimely.

As to the tax intercept notice, the agency must rescind the notice since it has removed the Petitioner from liability related to those claims.

CONCLUSIONS OF LAW

1. The Petitioner's appeal is not timely filed for Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], and Claim # [REDACTED].
2. The agency has removed the Petitioner's liability for Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], and Claim # [REDACTED]. Therefore, the agency must rescind the tax intercept action for those claims.

THEREFORE, it is

ORDERED

1. That as to Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], and Claim # [REDACTED], the Petitioner's appeal is dismissed because it was not timely filed.
2. That as to the tax intercept action for Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], and Claim # [REDACTED], the agency must rescind the action. This shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important, or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

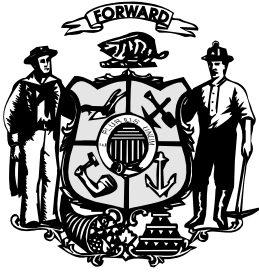
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of January, 2022

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 6, 2022.

Public Assistance Collection Unit

Public Assistance Collection Unit

Division of Health Care Access and Accountability